

**Testimony
Of
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**Before the
Michigan House of Representative
Employment Relations, Training, and
Safety Committee
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Mr. Chairman and members of the Committee, my name is Jim McIntire. I'm Vice President for Public Affairs for Kelly Services, a Michigan founded and headquartered staffing services firm. I appreciate the opportunity to be with you today to discuss an arcane issue, but one which is critical to the solvency and integrity of Michigan Unemployment Compensation Trust Fund: SUTA dumping.

As you know, SUTA dumping occurs when employers take steps to disguise their true unemployment experience for purposes of evading unemployment insurance taxes. Though many and varied, all SUTA dumping techniques have three things in common. First, they all involve a transfer of payroll. Second, they cost state trust funds revenue. Third, they all end up sticking other employers with the costs the dumpers manage to leave behind.

The principle under attack is a simple one. Employers fund the unemployment safety net based on their past layoff experience. If your former workers access the system frequently, you pay more. If you rarely layoff workers, you pay less. It is a true user tax, and one of the fairest that businesses pay. The problem we face today is that some employers have figured out ways to get around this principle. When they do that, other employers have to make up the difference.

As you may know, Kelly has been actively involved in exposing SUTA dumping. I'm pleased to say that we refused to engage in the practice. As SUTA dumping became more prevalent in the market place we worked with the Department of Labor and with the Congress to stop it. Because we were so actively involved, I can assure you that the intent of the federal legislation was to set minimum standards for the states, not maximum ones. The Congress understood that SUTA dumping techniques are state specific, and wanted to leave the states sufficient flexibility to end the practice.

The dollars involved are large and potentially tempting, particularly for those with large payrolls or poor unemployment experience. As a staffing company, payroll taxes are a significant part of our overall cost structure. If Kelly had SUTA dumped across the nation, we could have evaded about \$30 million in unemployment compensation taxes last year. That includes \$3.5 million a year right here in Michigan: one company, one year, and \$3.5 million.

All employers are hurt by the scheme. A good example is the 10% unemployment insurance tax credit that Michigan employers lost last year because the trust fund fell below a certain balance. Had SUTA dumping been eliminated the last three years, the trust fund would be healthier, and all Michigan employers would still be enjoying that credit. Thanks to the dumpers, the loss of that credit alone cost Kelly about \$350,000 last year.

No one defends SUTA dumping in public. No one argues that the experience rating approach is wrong. No one argues it is good that costs are shifted to other employers to make up for the dumpers. What you do hear are process arguments. "We should only meet the Federal minimums." "We should study this issue longer." Again, I can assure you that the Congress understood the issue, and never intended the legislation to be a one-stop, perfect silver bullet. They intended to give each state the flexibility to stop, not merely curb SUTA dumping within its jurisdiction.

The legislation before you takes a step in the right direction by addressing transfers between entities of common ownership or control. But it leaves untouched transactions between parties **not** under common ownership or control. Why distinguish between the two? Your workforce experience is your experience. The Department estimates that these transactions are the source of 40%-50% of a \$65 to \$90 million problem, or \$30 to \$40 million a

year. These estimates are fully consistent with the experience of other states that have moved against SUTA dumping.

But what if the Department is wrong? What if it is wrong by half? Then the problem is “only” \$15 to \$20 million. What if by half again? Then the problem is “only” \$7 to \$10 million. Is that a good reason for additional delay? Do we really want to hand the dumpers another round or two of evading their obligations? This is real money that does not go to the trust fund, and will ultimately be paid by other employers.

It is not in public dispute that SUTA dumping is wrong. It is not in dispute that the legislation fails to cover payroll transactions between independent entities.

There is no dispute that several amendments have been circulated that would reduce, if not eliminate the problem. The only possible issue in dispute is perhaps the size of the problem. May I make a suggestion? If you want a good empirical gauge of the value of a particular tax evasion strategy, look to the passion and treasure expended in its defense.

The key issue may have been clouded by rhetoric about a particular business model called professional employer organizations, or PEOs. The issue transcends any individual business model. Solving the problem need not, and does not disparage PEOs. Kelly Services operates a large one, and this PEO operator favors strong anti-dumping legislation. PEOs provide their clients with many valuable and legitimate benefits. But profiting from the unemployment compensation trust fund, and leaving others to pick up the tab, shouldn't be one of them.

This issue has been extensively discussed over the past several months and the lack of consensus within the business community is disappointing. Despite the extensive discussion, the issue is really quite simple, and easy to understand.

Should the employment experience of a given workforce follow that workforce when there is a change in organizational structure? Should an employer be allowed to walk away from its unemployment experience and make others pay for it?

While a step in the right direction, the bills before you do not fully solve the problem. If you leave any known dumping technique untouched, it is an endorsement of the behavior, and an open invitation to continue ripping of Michigan workers and employers. It is an affront to those who have played by the rules and resisted the financial temptations of SUTA dumping. We think Michigan employers deserve better than that.

The problem is before you now. You have available to you language that will solve it. I hope you will use it.

Thank you.